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I.C.C. DOCKET NO. 01-0662

WCOM Exhibit No. 6.0

Witness Campion

Date 3/1/02 Reporter RW

BEFORE THE ILLINOIS COMMERCE COMMISSION

Docket No. 01-0662

DIRECT TESTIMONY OF JOAN CAMPION

On Behalf of WorldCom, Inc.

WorldCom Exhibit No. 6.0

March 20, 2002

1 **I. INTRODUCTION**

2
3 **Q. Please state your name, employer and business address.**

4 **A.** My name is Joan Campion. I am employed by WorldCom, Inc. (WorldCom) and
5 my address is 205 North Michigan Avenue, Suite 1100, Chicago, Illinois 60601.
6

7 **Q. What position do you hold with WorldCom and what are your**
8 **responsibilities?**

9 **A.** I currently serve as Regional Director of Public Policy for the Midwest Region,
10 which includes the states of Illinois, Michigan, Ohio, Wisconsin, Indiana,
11 Minnesota, Iowa and Nebraska. In this position, which I have held for more than
12 five years, I am responsible for developing and implementing WorldCom's public
13 policy positions before the state commissions and legislatures in these states,
14 including efforts to ensure that the provisions of the Telecommunications Act of
15 1996 are fully implemented.
16

17 **Q. Please describe your educational background and previous work**
18 **experience.**

19 **A.** I hold a bachelor's degree from Mary Washington College in Fredericksburg,
20 Virginia, and I earned my Juris Doctor from the University of Dayton School of
21 Law, Dayton, Ohio. I joined MCI Telecommunications Corporation in 1991 as a
22 Senior Attorney with responsibility for representing MCI before state
23 commissions in the states of Pennsylvania, New Jersey and Delaware. Before

24 joining MCI, from 1989 until 1991, I served as Executive Director and Legal
25 Counsel to the Consumer Affairs Committee in the Pennsylvania House of
26 Representatives. In this position, I was responsible for legislation and advising
27 the House of Representatives on all issues under the jurisdiction of the
28 Pennsylvania Public Utility Commission. From 1985 until 1988, I served as an
29 Assistant Consumer Advocate in the Pennsylvania Office of Consumer Advocate.
30 In this position, I represented the interests of residential consumers before the
31 Pennsylvania Public Utility Commission.

32 **Q. Have you testified before this Commission or other state commissions?**

33 A. I have testified before this Commission and the Public Utilities Commission of
34 Ohio in the proceedings on the SBC/Ameritech merger. I have also testified on
35 access charges before the Wisconsin Public Service Commission, and have
36 testified on numerous occasions before legislative committees in my region.

37 **Q. What is the purpose of your testimony?**

38 A. My testimony supports WorldCom's position on the performance measures and
39 remedy plan that should be imposed upon Ameritech to ensure that Ameritech
40 provides nondiscriminatory access to Unbundled Network Elements ("UNEs"),
41 combinations of UNEs, interconnection and services. In addition, I will comment
42 on the lack of Total Element Long Run Incremental ("TELRIC") pricing for certain
43 combinations of UNEs, public interest concerns that the Illinois Commerce
44 Commission ("Commission") should consider in determining whether the
45 Commission can or should recommend that the Federal Communications
46 Commission ("FCC") grant an application by Ameritech Illinois to provide in-state,

interLATA services in Illinois, and the method by which the Commission should
measure the state of local competition in Illinois.

**II. THE COMMISSION SHOULD CONCLUDE THAT THE APPROPRIATE
PERFORMANCE MEASURES AND REMEDY PLAN WILL BE DETERMINED
BY THE COMMISSION'S ORDER IN DOCKET 01-0120.**

**Q. Have you reviewed the January 28, 2002 prefiled testimony of Ameritech
witness James D. Ehr and the draft affidavit describing the remedy plan
that Ameritech proposes as a part of this Section 271 proceeding?**

A. Yes, I have.

**Q. What is your understanding of Ameritech's position on performance
measures and the remedy plan that it is recommending the Commission
adopt?**

**A. Mr. Ehr's draft affidavit appears to propose a slightly modified version of the
remedy plan that SBC has in place in Texas. It is my understanding that the
remedy plan proposed by Ameritech in this proceeding is virtually identical to the
remedy plan that Ameritech tariffed in response to Condition 30 of the
Commission's order conditionally approving the SBC/Ameritech merger. See
Docket 98-0555, Order, September 23, 1999. According to Mr. Ehr, the remedy
plan filed in response to Condition 30 will expire three years after the
Commission's approval of the SBC/Ameritech merger – or by October 8, 2002 –
with the rest of Condition 30. Mr. Ehr posits that as a part of this 271 proceeding
"Ameritech Illinois is offering to extend the remedy plan as originally approved by**

70 the Commission for the same period of time as its "I2A" interconnection
71 agreement amendment." See Ehr Draft Affidavit, para. 276, pp. 100-101. The
72 "I2A" remedy plan would last for 18 months from the time that the Commission
73 approves Ameritech's plan as being consistent with Section 271 of the
74 Telecommunications Act of 1996 ("TA96").

75 **Q. Did the Illinois Commerce Commission ever "approve" the remedy plan**
76 **that Ameritech tariffed in response to Condition 30 of the Commission's**
77 **Order in Docket 98-0555?**

78 A. No. Contrary to Mr. Ehr's assertions, the Commission never approved
79 Ameritech's modified Texas remedy plan. Indeed, the Commission currently has
80 under review in Docket 01-0120 the very modified Texas remedy plan that
81 Ameritech is proposing as a part of this 271 proceeding. As of the date this
82 testimony is being prefled, a final Commission order addressing the merits of
83 Ameritech's modified Texas remedy plan in Docket 01-0120 has yet to be issued.

84 **Q. If the Illinois Commission currently has before it in Docket 01-0120 the**
85 **remedy plan Ameritech is proposing in this proceeding, and has not yet**
86 **addressed the merits of Ameritech's modified Texas remedy plan, much**
87 **less approved the plan, why expend time and resources examining the**
88 **remedy plan again within this proceeding?**

89 A. The short answer is that the Commission should not expend further resources
90 hashing through a remedy plan in this proceeding when the Commission will be
91 directly addressing the merits of the plan in Docket 01-0120. I believe that such

92 an endeavor would represent a huge waste of time, resources and effort given
93 the fact that these very same issues are being resolved in Docket 01-0120.
94

95 First, I find it incredible that after the Commission, CLECs and Ameritech
96 expended significant time and resources litigating the merits of Ameritech's
97 proposed modified Texas plan, as well as a competing plan submitted by the
98 CLECs, Ameritech argued that the plan will expire by October 9, 2002. While
99 there is a Proposed Order in Docket 01-0120 that agrees with Ameritech's
100 argument on this score, the CLECs vehemently disagree that is the case. If one
101 were to apply that same argument and logic to other conditions contained in the
102 order conditionally approving the SBC/Ameritech merger, then there would be
103 very little of value that the order would have accomplished. For example,
104 Condition 29 is the vehicle for getting Operations Support System ("OSS")
105 enhancements and system upgrades implemented. Like the performance
106 measurements and remedy plan requirement, OSS commitments are on-going.
107 If the Commission were to accept Ameritech's argument, then Ameritech could
108 presumably remove all of the OSS enhancements and system upgrades that it
109 implemented as a part of Condition 29 on October 9, 2002. Such a result would
110 be absurd.

111
112 Second, assuming for the sake of argument that the Commission meant for the
113 Ameritech remedy plan it finally approves to disappear October 9, 2002, that
114 means that the Commission approved plan will only have been effective less

115 than six months, based on the optimistic expectation that the Commission could
116 issue a final order in Docket 01-0120 by June 2002. Exceptions to the Proposed
117 Order are due by April 10 and replies to exceptions by April 26, 2002. Once that
118 cycle of briefing is complete, the Administrative Law Judges have to get a post
119 exceptions Proposed Order to the Commission for its consideration. And once
120 the Commission actually issues the order, there will be some period of time
121 before CLECs will actually be able to take advantage of the remedy plan that the
122 Commission approves. It simply does not make sense for the Commission to
123 address the merits of the modified Texas remedy plan in Docket 01-0120 and
124 then decide almost immediately thereafter (Phase 1 of this proceeding is
125 currently set to conclude in July 2002) to disregard its conclusions from Docket
126 01-0120 to adopt the exact same plan that Ameritech proposed when 01-0120
127 was first initiated.

128
129 Third, in the event that this proceeding drags out beyond October 8, 2002, and
130 given the likelihood that the Commission's Part 731 wholesale quality service
131 rulemaking will not be completed for another year or so, there is a very real
132 danger that there could be a "gap" in which there would be no performance
133 measures and remedy plan to help ensure nondiscriminatory treatment of
134 CLECs. The Commission should not be swayed by Ameritech's claims that the
135 performance measures and remedy plan that the Commission orders as a result
136 of Docket 01-0120 will go away October 9, 2002, and any such measures and
137 remedy plan after that date will be "voluntary" on Ameritech's part.

138 **Q. Is there any basis for adopting a plan with time limitations similar to what**
139 **Ameritech proposes for its remedy plan in this proceeding?**

140 A. Absolutely not. The Illinois General Assembly amended the Illinois Public
141 Utilities Act effective June 30, 2001, and included a provision that requires the
142 Commission to "establish and implement carrier to carrier wholesale service
143 quality rules and establish remedies to ensure enforcement of the rules." 220
144 ILCS 5/13-712(g). There is no 18-month sunset date for the requirements of
145 Section 13-712(g). If the Commission determines in Docket 01-0120 that the
146 appropriate remedy plan for Ameritech is different than the modified Texas plan
147 that Ameritech proposed, the Commission should ensure that the plan it finally
148 approves there remains effective until the enters an order to the contrary.
149 Ameritech's position on Condition 30 performance measures and remedy plan
150 and its position in this proceeding do nothing more than cast clouds of
151 uncertainty over the mechanisms that are designed to ensure that Ameritech will
152 continue to comply with the requirements of Section 271 and the Illinois Public
153 Utilities Act into the future.

154 **Q. What is your recommendation with respect to Ameritech's proposed**
155 **remedy plan?**

156 A. Hopefully, the Commission will have resolved the issue of the duration of the
157 performance measures and the remedy plan when the Commission issues a final
158 order in Docket 01-0120. If not, then I recommend that the Commission
159 conclude here that the appropriate remedy plan will be the plan that it approves
160 in Docket 01-0120. The Commission should specifically determine that it will not

161 recommend that the FCC approve an Ameritech Illinois 271 application unless
162 the remedy plan that it approved as a part of Docket 01-0120 is effective until the
163 Illinois Commission determines otherwise. That result is fair to Ameritech and
164 CLECs and will help to conserve the Commission's resources and the resources
165 of interested CLECs. Both Ameritech and CLECs will have to live with whatever
166 the Commission determines in that case, based on the merits of the arguments
167 advanced there, and the Commission will not have to unnecessarily complicate
168 this case by rehearing arguments from CLECs and Ameritech why there
169 preferred plans should be adopted as a part of this proceeding.

170
171 **III. DESPITE YEARS AND YEARS OF LITIGATION, CLECS STILL DO NOT**
172 **HAVE CERTAINTY WITH RESPECT TO THE RATES THEY MUST PAY**
173 **AMERITECH FOR CERTAIN COMBINATIONS OF UNES.**

174 **Q. Do CLECs know with certainty rates that they must pay Ameritech for UNES**
175 **and combinations of UNES that they purchase from Ameritech to serve**
176 **their end user customers?**

177 **A.** No. It is amazing that a CLEC still does not know today what nonrecurring rates
178 it must pay to Ameritech, for example, when CLEC wants to provide service to a
179 and the CLEC wants to provide such service by purchasing all the network
180 elements necessary to do so from Ameritech.

181 **Q. Is there a reason why it has taken so long for the Commission to set**
182 **TELRIC rates for certain UNES and combinations of UNES?**

183 A. Yes. Ameritech's intransigence and refusal to comply with past Commission
184 orders is the main reason, certainly with respect to nonrecurring charges for new
185 and additional lines served via the Unbundled Network Element Platform ("UNE-
186 P). It is *dismaying*, to say the least, that nearly four years after the issuance of
187 the original Ameritech TELRIC Order on February 17, 1998 (hereinafter referred
188 to as the "TELRIC Order"), Ameritech continues to flout Commission directives
189 and drag-out issues related to the nonrecurring charges that CLECs should
190 expect to pay for combinations of UNEs. But that is exactly what has happened.
191 There is no question in my mind that dilatory tactics on establishing TELRIC
192 rates has impeded the development of competition in the local
193 telecommunications market, increased costs of CLECs, and delayed the
194 availability of telecommunications services to consumers.

195 **Q. What do you mean?**

196 **A.** The TELRIC Order was clear with respect to Ameritech's obligation to file cost
197 studies and support any nonrecurring charges related to combinations of UNEs
198 set forth in its contracts:

199
200 The essence of the remaining issue between the parties
201 appears to be whether (and which) nonrecurring charges
202 should apply when a competitor purchases particular
203 combinations of unbundled network elements. We conclude
204 that the parties have not provided sufficient information in
205 this record to enable us to render a decision on this matter.
206 We direct Ameritech Illinois to submit additional testimony in
207 the next stage of this proceeding (at the time it submits its
208 proposed compliance tariff filing) which addresses, for each
209 UNE combination identified by AT&T/MCI and WorldCom: 1)
210 a description of the extent to which the separate elements of
211 each combination are combined in Ameritech Illinois' own
212 network for its own use; 2) the separate unbundled element

213 prices which Ameritech Illinois proposes would apply to a
214 purchase of the combination; 3) a description of any
215 additional activities and the costs of those activities which
216 are required to provide each unbundled element combination
217 where recovery of the costs of those activities is sought; 4)
218 an identification of each nonrecurring charge which
219 Ameritech Illinois proposes would or may apply to the
220 purchase of the UNE combination; including an identification
221 of all nonrecurring charges which Ameritech Illinois proposes
222 would or may apply to the situation where an end user's
223 existing service is converted "as is" to a new entrant and 5) a
224 description of the basis for calculation of each nonrecurring
225 charge which Ameritech Illinois proposes would or may
226 apply. Ameritech Illinois may submit any cost studies that it
227 believes support its proposals.

228 TELRIC Order, February 17, 1998, pp. 125-126.

229
230 Ameritech fully understood that the TELRIC Order directed it to provide cost
231 studies and testimony related to existing and new combinations of UNEs. In its
232 Application for Rehearing of the TELRIC Order, Ameritech complained that:

233 ...the Commission's requirement that Ameritech Illinois
234 provide additional testimony and cost studies concerning
235 certain unbundled network element combinations (Order, p.
236 125) rests on the false premise that Ameritech Illinois still
237 may be required to provide unbundled network element
238 combinations.[footnote omitted] As Chairman Miller correctly
239 stated 'this Commission should not be imposing prices on
240 combinations which we have no authority to require.' (Order,
241 Miller Dissent, p. 3). For the reasons stated above and in
242 Ameritech Illinois' supplemental memoranda, the
243 Commission's premise – as well as the testimony and cost
244 studies that the Commission ordered Ameritech Illinois to
245 provide – is contrary to law. Because Ameritech Illinois may
246 not be legally required to combine unbundled network
247 elements on behalf of CLECs or to provide CLECs with
248 preassembled unbundled network element combinations,
249 there is no lawful basis for the Order's requirement of
250 additional testimony. Accordingly, the Commission should
251 grant rehearing and amend the Order to hold that, consistent
252 with Iowa Utilities Board, Ameritech Illinois is not required to
253 combine network elements for CLECs or provide CLECs
254

255 with existing, preassembled combinations, or submit
256 additional testimony and cost studies on network element
257 combinations.[footnote omitted]

258 Application for Rehearing of Illinois Bell Telephone Company, Docket Nos. 96-
259 0486 and 96-0569 (consol.), filed March 9, 1998, p. 8.

260
261 With the Commission's directives clearly delineated,¹ and an obvious
262 understanding of the implications of those directives, Ameritech made a strategic
263 decision to withhold evidence in the form of testimony and cost studies in Docket
264 98-0396 – specifically cost studies and testimony supporting nonrecurring rates
265 related to new combinations of UNEs. It was only after the Commission issued
266 its Order in Docket 98-0396 on October 16, 2001 that Ameritech sought to
267 demonstrate nonrecurring costs that are purportedly associated with certain
268 “new” combinations of UNEs. Because of Ameritech’s intransigence, final
269 TELRIC nonrecurring rates for “new” combinations of UNEs will likely not be
270 established for another year or more.

271 **Q. Are you aware of other instances in which Ameritech has defied**
272 **Commission orders and impeded the establishment of TELRIC rates for**
273 **UNEs?**

274 **A.** Yes. Ameritech was required as a part of the Commission’s SBC/Ameritech
275 Merger Order to make available an “interim shared transport” offering to CLECs
276 at rates reasonably comparable to those established in Texas. When Ameritech
277 filed its interim shared transport offering, it did so at a rate that was 16 times the
278 rate established in Texas. The interim shared transport filing – something that
279 was supposed to hasten the development of competition by allowing CLECs to

¹ While the Commission amended the TELRIC Order on April 6, 1998, to make the order final and to clarify the level of the interim rate it had set for shared transport, the Commission made clear that in all other respects the February 17, 1998 TELRIC Order was to remain in full force and effect. Amendatory TELRIC Order, Docket Nos. 96-0486 and 96-0569 (consol.), April 6, 1998, p. 1.

280 purchase an end-to-end unbundled UNE-P, was again delayed by Ameritech's
281 intransigence. As the Commission noted:

282
283 It is ironic indeed that Ameritech contends it would be a waste of
284 our resources to spend time evaluating whether Ameritech's ULS-
285 IST tariff, now withdrawn and replaced with Ameritech's ULS-ST
286 offering, which is currently under investigation in Docket No. 00-
287 0700, complied with our prior orders requiring Ameritech to provide
288 shared transport. Ameritech argues that no CLEC has used it
289 anyway; thus, there is no reason to investigate it. We find
290 Ameritech's argument wholly disingenuous and designed to stave
291 off the inevitable conclusion that Ameritech's ULS-IST offering fails
292 to comply with our prior orders. The real question is not whether it
293 complies with our prior orders, but how many of our prior orders it
294 defies. In addition, given the currently pending ULS-ST tariff
295 investigation, repeating the Commission's positions on issues that
296 will, in all likelihood reappear there, may serve the parties well be
297 providing pronouncements of recent vintage to use in arguments
298 there.

299
300 We are similarly unconvinced by Ameritech's desperate attempt to
301 deflect a determination of whether its ULS-IST complied with our
302 prior orders by arguing that to make such a determination would
303 constitute an illegal declaratory ruling. We are not being asked to
304 make a declaratory ruling. A declaratory ruling is one where an
305 applicant requests that we make a determination as to whether a
306 particular rule or statute would apply to future conduct or a future
307 specific set of facts and circumstances. There is no risk of
308 speculation here. Ameritech's obligation to file its ULS-IST tariff
309 has already occurred, and the conduct, facts and circumstances
310 being examined have already occurred. We are not being asked to
311 make a declaratory ruling. Rather, we are simply being asked to
312 determine whether an offering Ameritech was required by us to file
313 -- and did file -- complied with our prior orders spelling out
314 Ameritech's obligations concerning that offering.

315
316 The answer is no, Ameritech has not, under any reasonable
317 interpretation, complied with our prior orders requiring it to provide
318 shared transport. Our Merger Order expressly required Ameritech
319 to import to Illinois the rates agreed to in Texas for interim shared
320 transport. We gave Ameritech the option of filing Illinois-specific
321 rates *provided the rates are reasonably comparable to the*
322 *importation of Texas rates.* Instead, Ameritech filed a tariff with
323 rates that are more than 16 times higher than the Texas rates. We

324 reject Ameritech's argument that the rates it filed in Texas were
325 "incorrect" because the rates overlooked various costs that should
326 have been recovered. In the first place this is simply a collateral
327 attack on the Texas results, which is inappropriate in this forum.
328 Secondly, this argument could have been raised in the Merger
329 case, but apparently was not, from which we infer that no
330 modifications should have been made to the Texas rates prior to
331 importation into Illinois. Our Merger Order clearly specified that the
332 Texas rates would be "the rates agreed to in Texas" – not some
333 hypothetical set of Texas rates. Ameritech failed to comply with our
334 Merger Order as it relates to the filing of interim shared transport.
335

336 We also agree with AT&T, MCI WorldCom and Z-Tel that
337 Ameritech's noncompliance is even more egregious than just
338 violating the Merger Order. The rates filed by Ameritech for ULS-
339 IST were also inconsistent with the shared transport cost study
340 originally filed with us by Ameritech in compliance with our TELRIC
341 Order. This shared transport cost study demonstrated that the
342 Texas rates we required Ameritech to import were not only
343 accurate, but almost identical to the shared transport rate originally
344 calculated by Ameritech.
345

346 TELRIC Compliance Order, Docket 98-0396, pp. 66-67.
347

348 **Q. Do you have concerns with the TELRIC rates that the Commission has**
349 **established?**

350 **A.** Yes. First, Ameritech has appealed the Ameritech TELRIC Order and
351 challenged virtually all of the conclusions the Commission reached which form
352 the basis for Ameritech's existing TELRIC rates. Second, as evidenced by the
353 Commission's reopening of the TELRIC Compliance Proceeding, Docket 98-
354 0396, the Commission has yet to determine nonrecurring charges for new
355 combinations of elements. Third, while the Commission's October 16, 2001
356 Order in the TELRIC Compliance Proceeding set a nonrecurring rate of \$1.02 for
357 migrations of customers from Ameritech to CLECs providing service to those
358 customers via the UNE-P, Ameritech has already filed an appeal of that order
359 challenging the Commission's conclusion that resulted in the rates it did adopt.

360 Fourth, in response to the Commission's Merger Order, Ameritech filed new
361 TELRIC studies with the Commission which are have not been reviewed or
362 approved. If recent studies that Ameritech has filed in other states in the
363 Ameritech region are any indication, the studies that Ameritech completed for
364 Illinois are likely requesting significant *increases* in existing TELRIC rates. I don't
365 believe the Commission should be *reevaluating* TELRIC rates that it took nearly
366 four years to review to determine whether they complied with the original TELRIC
367 Order, especially if Ameritech is proposing significant increases to rates. Indeed,
368 the Commission's Merger Order clearly contemplated that TELRIC rates for
369 UNEs, and shared and common costs in particular, would be going down, to the
370 benefit of CLECs. The bottom line is that Ameritech has done everything in its
371 power to cast doubt on the TELRIC rates that it is relying upon in this proceeding
372 to show how the local market in Illinois is irreversibly open to competition. That is
373 a major concern.

374 **Q. What can Ameritech or the Commission do to alleviate those concerns?**

375 **A.** Ameritech could withdraw its appeals of the Commission's TELRIC Order and
376 the Commission's TELRIC Compliance Order. Moreover, the Commission can
377 determine that existing TELRIC rates should be capped for a period of time – say
378 five years – since the telecommunications industry is a declining cost industry
379 and the synergies from the SBC/Ameritech merger should further ensure that
380 shared and common costs are going down. The five year cap would be roughly
381 commensurate with the time it took to complete the TELRIC Compliance
382 Proceeding, Docket 98-0396, plus the time it will take to complete the new
383 investigation of nonrecurring charges for new UNE combinations. These
384 solutions seem fair in light of the time it has taken, and continues to take, to get
385 TELRIC rates established and in light of Ameritech's demonstrated propensity to

386 impede the establishment of TELRIC rates. More importantly, these solutions
387 will provide CLECs and the Commission a level of comfort that there will be
388 certainty with respect to TELRIC rates for some time to come, thereby helping to
389 ensure that the local market will remain open going forward. Without such
390 assurances, the Commission is fully justified in declining to recommend that the
391 FCC grant Ameritech Illinois' application to provide in-state, interLATA
392 telecommunications services pursuant to Section 271 of TA96.

393
394 **IV. THE COMMISSION CONSIDER PUBLIC INTEREST ISSUES BEYOND THE 14**
395 **POINT CHECKLIST IN CONSIDERING WHETHER THE LOCAL MARKET IS**
396 **TRULY OPEN TO COMPETITION.**

397
398 **Q. Ameritech appears to argue that anything beyond federal law, including**
399 **TA96 and FCC orders, and the 14 point checklist items are irrelevant to this**
400 **proceeding. Do you agree?**

401 **A.** No. The Illinois Commission rendered many decisions on issues of great import
402 to local competition. Whether Ameritech has complied with such orders is, I
403 believe, directly relevant to whether the local market in Illinois is irreversibly open
404 to competition. Moreover, the Illinois General Assembly plainly stated the
405 requirements that it was placing on Ameritech and the Commission and its
406 expectations with respect to local competition when it amended the Illinois Public
407 Utilities Act effective June 30, 2001. That intent is clearly spelled out in Section
408 13-801, which provides in pertinent part that the Commission "require the
409 incumbent local exchange carrier [Ameritech] to provide interconnection,
410 collocation and network elements in any manner technically feasible to the fullest
411 extent possible to implement the maximum development of competitive

412 telecommunications service offerings.” 220 ILCS 5/13-801(a) (emphasis added).

413 In addition, Section 13-801 provides detailed requirements with respect to the
414 manner in which Ameritech is to provide interconnection, collocation, network
415 elements, combinations of network elements. If the Commission is expected to
416 intelligently consult with and advise the FCC regarding the extent to which the
417 local market in Illinois is open to competition, it must do so not only within the
418 context of the minimum requirements of federal law, but also within the context of
419 “additional state requirements contemplated by, but not inconsistent with, Section
420 261(c) of the federal Telecommunications Act of 1996, and not preempted by
421 orders of the Federal Communications Commission.” 220 ILCS 5/13-801(a).

422
423 Moreover, the Ameritech has voluntarily submitted to the requirements of Section
424 13-801, as its requirements apply only to Incumbent Local Exchange Carriers
425 (“ILECs”) that operate under alternative regulation. Since Ameritech has
426 voluntarily subjected itself to the requirements of Section 13-801 by affirmatively
427 choosing to operate under an alternative form of regulation, the Commission
428 should be particularly interested in the extent to which Ameritech has actually
429 implemented the requirements of and/or complied with Section 13-801.

430
431 **Q. Are there any requirements that state law imposes on Ameritech that**
432 **Ameritech has resisted?**

433
434 **A.** Yes. As noted above, Ameritech’s resistance to implementing a usable shared
435 transport offering, while both a state law and federal law requirement, delayed for
436 a very long time the ability of CLECs to be able to utilize UNE-P to serve
437 residential and small business customers. Indeed, continuing battles over

438 nonrecurring charges related to new lines and additional lines served via UNE-P
439 and for Enhanced Extended Links ("EELs") continues to delay local competition
440 in Illinois.

441
442 One recent example of Ameritech resistance to implementing state law
443 requirements to the detriment of local competition that I find most disturbing is its
444 attempt to get out of the requirement that it provide combinations of elements to
445 CLECs so that they can provide services to business customers with four or
446 more lines. In Docket 01-0614 in which the Commission is reviewing Ameritech's
447 implementation of the requirements of Section 13-801, Ameritech attacked
448 provisions of the Illinois Public Utilities Act that clearly allow business customers
449 to be served via UNEs, without respect to the number of lines the customers
450 have. For instance, the Illinois General Assembly fully expected that business
451 customers throughout Illinois with more than 5 lines would be protected from
452 monopoly pricing by competition. Section 13-502.5 ended the Commission's
453 review of Ameritech's classification of certain services as competitive, and
454 granted Ameritech flexibility to increase rates to customers with 5 lines or more:

455
456 *Sec. 13-502.5. Services alleged to be improperly classified.*

457
458 *(a) Any action or proceeding pending before the Commission*
459 *upon the effective date of this amendatory Act of the 92nd General*
460 *Assembly in which it is alleged that a telecommunications carrier*
461 *has improperly classified services as competitive, other than a case*
462 *pertaining to Section 13-506.1, shall be abated and shall not be*
463 *maintained or continued.*

(b) Rates for retail telecommunications services provided to business end users with 4 or fewer access lines shall not exceed the rates the carrier charged for those services on May 1, 2001. This restriction upon the rates of retail telecommunications services provided to business end users shall remain in force and effect through July 1, 2005; provided, however, that nothing in this Section shall be construed to prohibit reduction of those rates. Rates for retail telecommunications services provided to business end users with 5 or more access lines shall not be subject to the restrictions set forth in this subsection.

While the Illinois Public Utilities Act as amended granted Ameritech the regulatory freedom of alternative regulation and exposes the multi-line business user to the threat of higher rates if competition is not the result. The General Assembly did not relieve Ameritech of regulatory oversight for its multi-line business customers without ensuring that those customers have a choice of carriers. But Ameritech argued that it is not required to provide UNE-P for such customers because of FCC limitations on the areas in which Ameritech must provide unbundled local switching.

The Proposed Order in Docket 01-0614 rejects Ameritech's argument on this score, but the simple fact that Ameritech attempted to undercut the legislative deal that allowed Ameritech to reclassify its business services as competitive by attempting to restrict the ability of competitors to serve those very same customers is something that the Commission should consider when evaluating just how "open" the local market is. If Ameritech's position is that any state law that deviates from what federal law provides should be preempted, including the requirements of Section 13-801, Ameritech should say so now within the context of this proceeding. If Ameritech will be seeking such preemption, that fact is

relevant to the Commission's assessment of the extent to which the local market is open or extent to which it may be open in the future.

Q. Are there any state law orders or requirements that you are concerned Ameritech is not complying with to the detriment of local competition?

A. Yes, a couple of examples come to mind. First, the Commission in its investigation of Ameritech's special construction charges and practices in Docket 99-0593 found that Ameritech's special construction policy discriminates against CLECs in the assessment of special construction charges for loop conditioning.² The Commission directed Ameritech to recover its costs associated with loop conditioning for retail customers through explicit LRSIC based special construction charges and required such LRSICs to be filed within 90 days of the August 15, 2000 order.³ The Commission required Ameritech to charge its end user customers the same conditioning charges as it imposes on CLECs, at least until LRSIC based retail conditioning charges are available.⁴

Based on my observation of Ameritech's advertisements for its Digital Subscriber Line ("DSL") product, it is apparent that Ameritech waives nonrecurring charges for its end user customers on a regular basis. The question of whether Ameritech is actually complying with the special construction order and assessing end user customers the loop conditioning charges in the same manner it assesses loop conditioning charges on CLECs is something that directly impacts that ability of CLECs to compete with Ameritech for advanced services offering and is

² The activities associated with loop conditioning, eg: removal of bridged taps and load coils, must be conducted in order to provision both ISDN and DSL services. See Investigation of Construction Charges, Order, Docket 99-0539, issued August 15, 2000, 2000 Ill. PUC LEXIS 654, at LEXIS p. *256.

³ Docket 99-0539 Order, LEXIS p. *258.

⁴ Docket 99-0539 Order, LEXIS p. *265.

516 something that the Commission should be able to answer coming out of this
517 proceeding. Ameritech should in this proceeding specify in testimony exactly if
518 and how it has complied with the requirements of the Commission's special
519 construction order. To this end, Ameritech should specify the total number of
520 retail customers it has assessed line conditioning charges and the total amount
521 assessed to retail customers since August 15, 2000 as contrasted to the total
522 number of CLECs Ameritech has assessed line conditioning charges and the
523 total amount of such charges assessed to CLECs during the same period. In
524 addition, Ameritech should specify what it has charged any of its affiliates,
525 including Ameritech Advanced Data Services ("AADS"), for loop conditioning.⁵
526

527 Second, it is my understanding that that Ameritech has authorized agents and
528 distributors of its services that will provide advanced services, like high speed
529 data lines. Similarly, Ameritech on its own or through its affiliates, including
530 AADS, provides such advanced services. There are requirements in state law
531 that "The maximum time period [for Ameritech's provision of network elements]
532 shall be no longer than the time period for the incumbent local exchange carrier's
533 provision of comparable retail telecommunications services utilizing those
534 network elements." 220 ILCS 5/13-801(d)(5). Because CLECs compete with
535 Ameritech and its authorized agents and distributors to provide advanced
536 services to end user customers, it is imperative that the Commission know what
537 Ameritech's time intervals are for provisioning high speed data lines, including T-
538 1 and DS1 lines, to Ameritech's end user customers and to customers of

⁵ The Commission prohibited AADS from engaging in discrimination by imposing the following condition in granting its Certificate of Service Authority: "AADS shall not sell or provide any services pursuant to any expanded certificate authority received in this docket to any customer or end-user at a price lower than AADS' costs, including the costs of any service components utilized, to provide said services to that customer or end-user." See Order, Docket No. 94-0308, August 16, 1995, p. 6; Docket 99-0593 Order, at LEXIS pp. *225 - *226.

Ameritech's authorized agents and distributors. Because CLECs often have to purchase from high speed data lines from Ameritech in order to provision advanced services to their customers, Ameritech's incentive to delay provisioning of such lines to its competitors in order to gain an unwarranted competitive advantage is a very real concern. Ameritech has made no showing that I am aware concerning what the provisioning intervals are for high speed data lines, including T-1s and DS1s, to itself, its affiliates or its authorized agents versus what its provisioning times are for those same types of circuits to CLECs. Given the detrimental impact that discriminatory provisioning of high speed data circuits would have on the local market in Illinois, I believe that this is an issue the Commission should be interested in evaluating as a part of this proceeding. Ameritech could assist the Commission in this endeavor by providing testimony setting forth the actual provisioning intervals for high speed data circuits, including T-1s and DS1s, to itself, its affiliates and its authorized agents and distributors and contrasting those with the actual provisioning intervals for the same circuits to CLECs.

Q. Are there any other items that do not fit neatly under the 14 point checklist that the Commission should take into consideration?

A. Yes. As I discussed above, Ameritech relies on certain Commission findings -- for example the Commission's setting of certain TELRIC rates -- in its attempt to demonstrate that the local market in Illinois is open to competition. See, e.g., Draft Brief in Support of 271 Application, p. 19. While Ameritech relies on such certain Commission findings to make its 271 showing, it has in many instances directly attacks those same findings and decisions in appeals it has taken of Commission orders. Indeed, many of the Commission's pro-competitive decisions that Ameritech points to, including but not limited to orders in Docket

Nos. 96-0486/96-0569 (TELRIC Order), 98-0396 (TELRIC Compliance), 00-0393 (Line Sharing), Ameritech has challenged it multiple petitions for reconsideration or on appeal. Since the FCC has found that it "must make certain that the BOCs have taken real, significant, and irreversible steps to open their markets" before authorizing 271 entry,⁶ I do not understand how Ameritech can point to Commission decisions in support of its 271 ambitions on the one hand, and the on the other directly attack the order on which it relies. In my view, it is hypocritical of Ameritech to rely on any Commission decisions, whether they be FCC or ICC decisions, that it is actively seeking to overturn. The Commission should ask itself just how irreversible the steps are that have been taken in light of Ameritech's continuing attacks on decisions it points to for support. Indeed, Ameritech should make clear for the Commission exactly which FCC and Illinois Commission orders it has appealed and what its intentions are in the event it is successful in its attacks on those orders. It may be that Ameritech is willing to withdraw outstanding appeals if it truly wants to demonstrate the irreversible steps to opening markets that the orders represent. Absent such a discussion by Ameritech, there will be a cloud continual hanging over those decisions it has appealed unless and until Ameritech's threat to have those decisions overturned is eliminated.

V. THE COMMISSION SHOULD DISREGARD AMERITECH CLAIMS ABOUT THE STATUS OF LOCAL COMPETITION IN ILLINOIS AND INSTEAD RELY ON ITS OWN INFORMATION.

⁶ Federal Communications Commission Memorandum Opinion and Order, In re Section 271 Application of Ameritech Michigan to Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137, 12 F.C.C.R. 20543 (Aug. 19, 1997) ("Michigan Order"), at para. 18. Similarly, the U.S. Department of Justice has stated that 271 applications "should be granted only when the local markets in a state have been fully

588 **Q. Ameritech provided some information in the draft affidavit of Deborah**
589 **Heritage concerning the status of local competition in Illinois. Do you**
590 **believe the Commission would be justified in relying on such information in**
591 **making any determinations with respect to whether the local market in**
592 **Illinois is open to competition?**

593 **A.** No. First, Ms. Heritage did not file testimony that contains this information. It
594 only appears in her draft affidavit. It is unclear to me how Ameritech intends to
595 enter into the record in this proceeding without making Ms. Heritage available for
596 cross examination. So, from a procedural standpoint, I am unclear how this
597 information would be entered into the record. Second, it makes no sense for the
598 Commission to rely on information provided by Ameritech when the Commission
599 already has information it needs to make a more accurate evaluation of the state
600 of competition in Illinois. I know, for instance, that all LECs in the state were
601 required to respond to the Commission's local competition data request in March.
602 Since the Commission now has data directly from all carriers regarding the
603 number of lines served in the state, there simply is no reason to accept
604 Ameritech's convoluted analysis that may result in an inaccurate picture of
605 competition in Illinois. Most LECs file similar information with the FCC, which the
606 FCC uses to compile statistics on local competition. Thus, the FCC and the ICC
607 independently compile information on the status of local competition and it is that
608 information that the regulatory authorities should rely upon to evaluate the state
609 of local competition in Illinois.

and irreversibly open to competition." See DOJ evaluation of Louisiana's first application, at iii, 1-2, and DOJ's evaluation of the second Louisiana application, at 1.

610 **Q.** Does this conclude your testimony?

611 **A.** Yes.